

REMARKS

Applicant has carefully reviewed the Application in light of the Office Action mailed April 1, 2009. At the time of the Office Action, Claims 9-15 and 20-25 were pending in the Application and stand rejected. Applicant amends several Independent Claims without prejudice or disclaimer. The amendments to these claims are not the result of any Prior Art reference and, thus, do not narrow the scope of any of the claims. Furthermore, the amendments are not related to patentability issues and only further clarify subject matter already present. All of Applicant's amendments have only been done in order to advance prosecution in this case. Applicant respectfully requests reconsideration of the pending claims and favorable action in this case.

Section 101 Rejection

The Examiner rejects Claims 9-12 and 20-25 under 35 U.S.C. §101 and stated that the claimed invention is directed to non-statutory subject matter. Applicant has made a modest amendment to the identified Independent Claims in an effort to address the Examiner's concern and to comply with the ever changing §101 guidelines at the USPTO.

Any amendment in this regard should not be construed as an agreement with or acquiescence to the propriety of the Examiner's contention. Applicant reserves the right to comment on the appropriateness of the §101-based amendment at a future time, should Applicant deem it appropriate to do so.

Section 112 Rejection

The Examiner rejects Claims 20-25 under 35 U.S.C. §112, sixth paragraph. Applicant directs the Examiner to page 37 of the Specification for examples of the possible 'means' that could be employed in such environments. While that list is far from exhaustive or complete, it does offer compliance with the provisions of 35 U.S.C. §112.

Section 103 Rejection

The Examiner rejects Claims 9-15 and 20-25 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,537,592 issued to King et al. (hereinafter "*King*") in view of U.S. Patent No. 6,775,274 issued to Ain et al. (hereinafter "*Ain*") and further in view of U.S. Patent No. 6,292,833 issued to Liao et al (hereinafter "*Liao*").

Applicant respectfully reminds the Examiner that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the prior reference (or references when combined) must teach or suggest all of the claim limitations.<sup>1</sup>

Independent Claim 9 recites "...scanning a nonvolatile memory medium with a processor to find a first memory block containing **a header indicating that the first memory block is the first memory block of an existing file stored on the nonvolatile memory medium** and finding a next memory block using a **next block pointer stored in the header of the first memory block**, if the existing file comprises more memory blocks than the first memory block, the existing file being opened upon completion of the finding, the header including a flag that comprises a first bit that is set if the first memory block is a first block of a file, a second bit that is set if the first memory block is a last block of the file, and a third bit that is set if the first memory block is part of a secure file."

For this first identified limitation, no reference of record provides a **header indicating that the first memory block is the first memory block of an existing file stored on the nonvolatile memory medium**. At the passage cited by the Examiner for a header indicative of the first memory block being the first block of an existing file on the medium, there is nothing for this disclosure. In regards to the second limitation, there is no next block pointer stored in the header of the first memory block. For the third limitation, there is nothing to account for

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<sup>1</sup> See M.P.E.P. §2142-43.

the existing file being opened upon completion of the finding. Thus, there is a dependency issue to be satisfied to trigger the file being opened. Again, no reference accounts for these capabilities.

Finally, the last three bits (having particular qualities or features) within the flag are not found in the Examiner's main reference. This point is conceded. However, the Examiner mistakenly relies on another flawed reference for these teachings. At the passages cited by the Examiner for potentially relevant discussions related to these limitations, there is simply nothing that discloses such capabilities. Again, these important limitations are provided for in Independent Claim 9, but no reference of record includes such elements. Applicant has reviewed the references in their entireties and finds nothing that would be relevant to such operations. Applicant stands ready to Appeal this issue should the Examiner disagree.

The other Independent Claims recite limitations similar, but not identical, to these limitations and, therefore, are allowable using a similar rationale. Additionally, the corresponding dependent claims from these Independent Claims are also patentably distinct for analogous reasons.

For at least these reasons, all of the pending claims have been shown to be allowable as they are patentable over the references of record. Notice to this effect is respectfully requested in the form of a full allowance of these claims.

CONCLUSION

Applicant has now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicant respectfully requests reconsideration and allowance of the pending claims.

No additional fees are believed due. However, if Applicant is incorrect, please apply any other charges or credit any overpayment to Deposit Account No. 50-4889 of PATENT CAPITAL GROUP, referencing the attorney docket number referenced above.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicant invites the Examiner to contact Thomas J. Frame at (214) 823-1241.

Respectfully submitted,

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